UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

TYGHE JAMES MULLIN,

Plaintiff,

v.

CITY OF MOUNTAIN VIEW, CALIFORNIA, et al.,

Defendants.

Case No. 5:25-cv-02191-BLF

ORDER DISMISSING THIRD AMENDED COMPLAINT

[Re: ECF No. 75]

Before the Court is Defendants' motion to dismiss pro se Plaintiff Tyghe James Mullin's Third Amended Complaint ("TAC"). ECF No. 75 ("Mot."); ECF No. 80 ("Reply"). Mr. Mullin opposes the motion. ECF No. 78 ("Opp."). The motion is suitable for decision without oral argument; the hearing set for March 26, 2026, is VACATED. *See* Civ. L.R. 7-11(b).

The motion is GRANTED. The TAC is DISMISSED WITH PREJUDICE.

I. BACKGROUND

On March 3, 2025, Mr. Mullin initiated this action and moved to proceed in forma pauperis ("IFP"). ECF No. 1. Shortly thereafter, he filed a first amended complaint as of right, asserting § 1983 claims for (1) unreasonable search and seizure in violation of the Fourth Amendment, (2) deprivation of due process in violation of the Fourteenth Amendment, and (3) municipal liability for violation of these constitutional rights under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). ECF No. 7 at 2.

On April 7, 2025, the Court granted Mr. Mullin's IFP application and screened and dismissed the amended complaint pursuant to 28 U.S.C. § 1915(e), finding that the § 1983 claims were deficient because they did not allege sufficient facts to explain the circumstances giving rise to the alleged constitutional violations and declining to exercise supplemental jurisdiction over the

state law claims. ECF No. 17 at 2.

Mr. Mullin filed the second amended complaint on April 25, 2025, in which he clarified that his three federal claims arise from what he characterizes as Defendant police officers' illegal entry, search, and seizure of his rental storage unit, which led to his state law convictions for burglary and identity theft. ECF No. 23 ¶¶ 12–26. Mr. Mullin also asserted a fourth § 1983 claim, alleging that Defendants deprived him of his First Amendment rights by retaliating against him for protected activity. *Id.* ¶¶ 56–60. On June 6, 2025, the Court screened the second amended complaint and found that these additional factual allegations were sufficient to pass the initial screening under 28 U.S.C. § 1915(e). ECF No. 39.

On September 24, 2025, the Court granted Defendants' motion to dismiss, holding that the first three claims were barred by the *Heck* doctrine and that the fourth retaliation claim failed to plausibly allege that Defendants were motivated by or even had knowledge of Mr. Mullin's alleged protected activities. ECF No. 53. The Court dismissed the claims barred by the *Heck* doctrine with prejudice due to the futility of amendment but allowed leave to amend as to the retaliation claim.

Mr. Mullin filed the TAC on October 30, 2025. ECF No. 65 ("TAC"). In the TAC, Mr. Mullin alleges that Defendants have engaged in a retaliatory campaign of confiscating and refusing to return his personal property and withholding records necessary for legal redress to punish him for litigating federal civil rights actions against Defendants. *Id.* at 10–11. Mr. Mullin also alleges that these actions were intentional and aimed at chilling his protected activities, urging that "[m]ultiple acts occurred within days of Plaintiff sending police accountability notices and filing CPRA inquiries, demonstrating temporal proximity suggesting retaliatory motive [sic]." *Id.* at 15.

II. LEGAL STANDARD

"A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted tests the legal sufficiency of a claim." *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011) (internal quotation marks and citation omitted). While a complaint need not contain detailed factual allegations, it "must contain

sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

Where a plaintiff proceeds pro se, the court "must construe the pleadings liberally" and afford the plaintiff "the benefit of any doubt." *Boquist v. Courtney*, 32 F.4th 764, 774 (9th Cir. 2022) (internal quotation marks and citation omitted). "A liberal construction of a pro se complaint, however, does not mean that the court will supply essential elements of a claim that are absent from the complaint." *Id.*

Upon granting a motion to dismiss, a court has discretion to allow leave to amend the complaint pursuant to Rule 15(a). "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear . . . that the complaint could not be saved by amendment." *Eminence Capital, L.L.C. v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). In deciding whether to grant leave to amend, the Court considers the factors set forth by the Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962), and discussed at length by the Ninth Circuit in *Eminence Capital*. The Ninth Circuit in *Eminence Capital* identified several factors to consider, including (1) undue delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4) undue prejudice to the opposing party, and (5) futility of amendment. *See* 316 F.3d at 1052.

III. DISCUSSION

Defendants argue that the TAC fails to state a claim for four independent reasons, urging that (1) Mr. Mullin improperly lumps Defendants and others who may be parties in other lawsuits together in contravention of Federal Rule of Civil Procedure 8(a), (2) Mr. Mullin fails to plead actionable adverse actions, (3) the retaliation claim is also barred by the *Heck* doctrine and qualified immunity, and (4) Mr. Mullin fails to allege requisite retaliatory motivation or causal connection. Mot. at 5–9. The Court agrees that the first and fourth arguments warrants dismissal of Mr. Mullin's claim and need not decide whether the claim fails to plead actionable adverse actions or is barred.

Defendants correctly point out that Mr. Mullin ascribes several disparate actions to

Defendants, ranging from withholding access to his vehicle to refusing to turn over administrative records, which "seem[s] to implicate police officers and administrators, as well as personnel involved with litigation and responses to public records act requests." Mot. at 5. "As a general rule, when a pleading fails 'to allege what role each Defendant played in the alleged harm,' this 'makes it exceedingly difficult, if not impossible, for individual Defendants to respond to Plaintiffs' allegations.'" *Adobe Sys. v. Blue Source Grp. Inc.*, 125 F. Supp. 3d 945, 964 (N.D. Cal. 2015) (quoting *In re iPhone Application Litig.*, No. 11-md-02250-LHK, 2011 WL 4403963, at *8 (N.D. Cal. Sept. 20, 2011)). Such is the case here—while it is permissible to allege retaliatory conduct at a modest level of generality, it is simply impossible here to parse out which conduct is ascribed to which Defendant, and Mr. Mullin's repeated failure to even allege particular acts with any particularity fails to clear Rule 8's relatively low threshold. *See, e.g., Gen-Probe, Inc. v. Amoco Corp.*, 926 F. Supp. 948, 961 (S.D. Cal. 1996).

Relatedly, Defendants argue that Mr. Mullin again fails to sufficiently plead factual allegations from which retaliation or even causation could be inferred. Mot. at 9. Mr. Mullin virtually concedes that the TAC does not allege the requisite knowledge to state a claim for First Amendment retaliation, stating that "Plaintiff does not allege causation definitively" but that "the record suggests that the timing may reflect retaliatory motive." Opp. at 4. Merely alleging that Defendants took alleged adverse actions against him (which are primarily administrative in nature, to boot) after he engaged in alleged protective activity is insufficient to state a claim for First Amendment retaliation. *See, e.g., Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014) ("We have repeatedly held that mere speculation that defendants acted out of retaliation is not sufficient." (citations omitted)). Mr. Mullin's failure to allege causation is made doubly clear by his allegation that Defendants in completely unrelated capacities have retaliated against him for his protected conduct in investigating purported misconduct in state agencies and departments that have nothing to do with them. *See, e.g.*, TAC at 12–13.

Mr. Mullin has already had the opportunity to amend his complaint three times in this action, and the Court agrees with Defendants that further amendment would be futile. The *Eminence* factors accordingly favor dismissal without leave to amend.

IV. ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that: the motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.

Dated: December 19, 2025

BETH LABSON FREEMAN
United States District Judge